IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23/02/2004

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THE HONOURABLE MR. JUSTICE A.S. VENKATACHALAMOORTHY
AND
THE HONOURABLE MR. JUSTICE P.K. MISRA

TAX CASE No.91 of 2004

The Commissioner of Income Tax-II,
Coimbatore. .. Appellant

-Vs-

M/s. Periyar District Co-op.
Milk Producers Union Ltd.,
Erode. .. Respondent

Tax Case Appeal arising out of ITA Nos.2163/Mds/94-Asst. year 1991-9
2 dated 29.8.2003 at the instance of the Revenue.

For Appellant : Mr.K. Subramaniam

:J U D G M E N T

(The judgment of the Court was made by Justice P.K. MISRA)
This appeal has been filed by the Commissioner of Income Tax,
Coimbatore under Section 260A of the Income Tax Act, 1961.

2. Respondent is a Co-operative Society. For the Assessment Year 19
91-92, the respondent Society filed its return declaring a loss of
Rs.80,63,122/- and claimed the benefit of carry forward of the said loss.
Subsequently, a revised return was filed after the final audit of accounts
indicating higher loss. The Assessing Officer restricted the carry forward of
loss as per the original return. The Assessee / Respondent filed appeal. The
Appellate Authority while holding that the revised return was a valid return,
observed that, for the purpose of carry forward of loss, the only return filed
under Section 139(3)can be taken into account. Accordingly, the order of the
Assessing Officer was confirmed. Aggrieved by the aforesaid order, the
assessee filed appeal before the Income Tax Appellate Tribunal. The Tribunal
observed that once a revised return was filed under Section 139(5), such a
return has to be considered. Accordingly, the Tribunal set aside the orders
passed by the Assessing Officer and the first Appellate Authority.

3. The contention of the learned counsel appearing for the appellant is to the effect that a revised return as contemplated under Section 139(5) can be filed in respect of a return which is filed under Section 139(1) and no such revised return is contemplated in respect of a return filed under Section 139(3).

4. On the basis of the aforesaid contention, the appellant has sought to raise the following substantial questions of law :-
1. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in holding that the assessee could file a revised return u/s.139(5) claiming a higher amount of business loss to be carried forward after filing the return of loss within the due date prescribed u/s 139(3) ?
2. Whether on the facts and in the circumstances of the case, the Income-tax Appellate Tribunal was right in holding that once a return of loss is filed u/s.139(3), it takes the character of return filed u/s 139(1) in respect of which the assessee can file a revised return claiming a higher amount of loss, u/s 139(5) ?

5. After hearing the learned counsel for the appellant at length and after considering the relevant provisions and the materials on record, we do not consider this as a fit case for admission, as, according to us, no substantial question of law arises for determination.

6. To appreciate the contention of the learned counsel for the appellant, it is necessary to refer the relevant provisions, namely Sections 139(3) and 139(5) of the Income Tax Act, which are quoted here under :-

 139(3) If any person who has sustained a loss in any previous year under the head Profits and gains of business or profession or under the head Capital gains and claims that the loss or any part thereof should be carried forward under sub-section (1) of section 72, or sub-section (2) of section 73, or sub-section (1) or sub-section (3) of section 74, or sub-section (3) of section 74A, he may furnish, within the time allowed under sub-section (1), a return of loss in the prescribed form and verified in the prescribed manner and containing such other particulars as may be prescribed, and all the provisions of this Act shall apply as if it were a return under sub-section (1).

139(5)- If any person, having furnished a return under sub-section (1), or in pursuance of a notice issued under sub-section (1) of section 142, discovers any omission or any wrong statement therein, he may furnish a revised return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

7. A bare perusal of the aforesaid two provisions, more particularly the provision contained in Section 139(3), makes it clear that a return of loss filed under Section 139(3) may be filed within the time allowed

under Section 139(1). Once such a return is filed, all the provisions of the Income Tax Act shall apply as if such return has been filed under Section 139(1). This position is clear from the expression . . . all the provisions of this Act shall apply as if it were a return under sub-section (1). In other words, a return filed under Section 139(3) is deemed to be a return filed under Section 139(1). The provision contained in 139(3) makes it clear that all the provisions of this Act shall apply to such a return as if it were a return under Section 139(1). In view of such a specific provision, there is no reason to exclude the applicability of Section 139(5) to a return filed under Section 139(3).

8. Learned counsel appearing for the appellant has further submitted that Section 80 of the Income Tax Act, which contains the provision relating to carry forward of loss, does not contemplate that a revised return can be filed, and therefore, the loss as indicated in the original return alone can be taken into account. We do not consider such a contention to be tenable. In the face of the specific provision contained in Section 139(3) laying down that all the provisions contained in the Act shall apply to a return under Section 139(1), there was no further necessity in Section 80 to refer so such provisions. On the other hand, there is no specific provision contained either in Section 80 or in Section 139 excluding the applicability of Section 139(5) to a return filed under Section 139(3) of the Income Tax Act.

9. For the aforesaid reasons, we are convinced that there is no substantial question of law involved in this appeal, which is accordingly dismissed at the stage of admission.

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To

M/s. Periyar District Co-op.
Milk Producers Union Ltd.,
Erode.